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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Christopher Justin Eads,

10 Plaintiff,

11 v.

12 United States of America, et al.,

13 Defendants.  
14

No. CV-20-00019-TUC-JGZ

**ORDER**

15 Pending before the Court are three motions related to Plaintiff Eads' claim against  
16 Defendant Miller: Eads' Motion for Default Judgment as to Miller (Doc. 209); Miller's  
17 Motion to Dismiss (Doc. 223); and Eads' Motion Requesting Document. (Doc. 228.) The  
18 Court will address each in turn.

19 **I. Eads' Motion for Default Judgment as to Miller**

20 On October 24, 2022, Eads filed an Application for Entry of Default against Miller.  
21 (Doc. 193.) On November 14, 2022, the Clerk of Court entered Default against Miller.  
22 (Doc. 205.) On November 21, 2022, Eads filed a Motion for Default Judgment as to Miller.  
23 (Doc. 209.) On November 23, 2022, the Court vacated the Clerk's Entry of Default against  
24 Miller. (Doc. 218.) For the same reasons as set forth in the Court's November 23, 2022  
25 Order, including that default against Miller was premature and the record of service was  
26 insufficient, the Court will deny Eads' Motion for Default Judgment.

27 **II. Miller's Motion to Dismiss**

28 On November 23, 2022, the Court directed the Clerk to deliver to Miller a copy of

the Court's Order, Eads' First Amended Complaint, and Administrative Office of the U.S. Courts' Pro Se 3 Form. (Doc. 218.) The Court also directed Miller to file a motion or responsive pleading within 60 days. (*Id.*) On November 28, 2022, Miller filed a Motion to Dismiss the Affidavit in Support of Request to Enter Default Judgment. (Doc. 223.)

The Court will deny Miller's Motion as moot because, as discussed above, the Court has already vacated the Entry of Default. However, as stated in the Court's November 23, 2022 Order, Miller must still file a motion or pleading, responding to Count Five of Eads' First Amended Complaint. Miller must also properly serve all parties after filing the motion or pleading. *See* Fed. R. Civ. P. 5.

### III. Eads' Motion Requesting Document

On December 5, 2022, Eads filed a Motion Requesting Document. (Doc. 228.) Upon considering the Motion, and good cause appearing, the Court will grant Eads' requests for a copy of Miller's October 24, 2022 Motion for Limited Discovery, which Miller did not serve upon Eads.

### IV. Conclusion


Accordingly,

#### IT IS ORDERED:

1. Eads' Motion for Default Judgment as to Miller (Doc. 209) is **denied**.
2. Miller's Motion to Dismiss (Doc. 223) is **denied** as moot. Miller must file a motion or pleading, pursuant to the Court's November 23, 2022 Order, responding to Count Five of Eads' First Amended Complaint. Miller's deadline to file a motion or pleading is **January 23, 2023**.

3. Eads' Motion Requesting Document (Doc. 228) is **granted**. The Clerk of Court shall mail to Eads a copy of Miller's Motion for Limited Discovery (Doc. 194).

Dated this 20th day of December, 2022.

  
Honorable Jennifer G. Zipps  
United States District Judge